

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

William C. Toth Jr., et al.

Plaintiffs,

v.

Leigh M. Chapman, et al.,

Defendants

Case No. 1:22-cv-00208-JPW

**NOTICE TO THE COURT WITHDRAWING EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Earlier this week the Supreme Court denied emergency relief in this case, as well as an accompanying case from North Carolina. In the North Carolina case, Justice Kavanaugh filed a concurring opinion observing that North Carolina had requested “extraordinary interim relief—namely, an order from this Court requiring North Carolina to change its existing congressional election districts for the upcoming 2022 primary and general elections.” *Moore v. Harper*, No. 21A455 (Kavanaugh, J., concurring) (attached as Exhibit 1). Justice Kavanaugh went on to explain that:

This Court has repeatedly ruled that federal courts ordinarily should not alter state election laws in the period close to an election. *See, e.g., Republican National Committee v. Democratic National Committee*, 589 U.S. ___, ___ (2020) (per curiam) (slip op., at 2); *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). In light of the *Purcell* principle and the particular circumstances and

timing of the impending primary elections in North Carolina, it is too late for the federal courts to order that the district lines be changed for the 2022 primary and general elections, just as it was too late for the federal courts to do so in the Alabama redistricting case last month. *See Merrill v. Milligan*, 595 U.S. ____ (2022) (Kavanaugh, J., concurring).

Id. at 1–2.

North Carolina’s primary election is scheduled on the same date as Pennsylvania’s—May 17, 2022. The plaintiffs do not believe that the situation in this case can be distinguished from North Carolina with regard to the *Purcell* principle, and Justice Kavanaugh’s concurrence in *Moore* indicates that emergency relief from this Court enjoining the implementation of the Carter Plan for the 2022 elections would be improper under *Purcell* and would likely be reversed by the Supreme Court. The plaintiffs therefore wish to withdraw the emergency motion for injunctive relief that they filed on February 20, 2022 (ECF Nos. 8 and 10), and the renewed emergency motion filed on February 23, 2022 (ECF No. 30).

The plaintiffs continue to believe that the defendants’ implementation of the Carter Plan is unconstitutional and unlawful, and they will continue pursuing relief to restrain the defendants from using or implementing the Carter Plan for elections subsequent to 2022. But they will not pursue that relief on an emergency basis. Instead, the plaintiffs intend to file a new motion for preliminary injunction that will ask the Court to enjoin the defendants from using or implementing the Carter Plan after the 2022 elections have occurred. We

have conferred with counsel for the defendants and intervenors and hope to agree on a briefing schedule for that motion within the next few days.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on March 10, 2022, I filed this document through CM/ECF upon the following counsel of record in this case:

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